

**Notice of Allowability**

Application No.

10/770,117

Examiner

Zachariah Lucas

Applicant(s)

BERZOFKY ET AL.

Art Unit

1648

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the response of November 14, 2005.
2. ☒ The allowed claim(s) is/are 21-32.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |   |  |
|---|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                                |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date <u>2/1/06</u> . |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment  |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material          | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance                                  |
|   | 9. <input type="checkbox"/> Other _____  |

### **DETAILED ACTION**

1. Currently, claims 21-32 are pending and under consideration.
2. In the prior action, mailed on September 14, 2005, claims 21-32 were pending and rejected. In the Response, filed on November 14, 2005, claims 22-24 and 29-32 were amended.
3. Claims 21-32 are allowed.

### ***Priority***

4. Applicant's claim to priority to earlier U.S. application 09/763,260, now U.S. Patent 6,685,944, which is a 371 of PCT/US99/18674 filed on August 17, 1999, which claims priority to U.S. provisional application 60/097,446, filed on August 21, 1998, is noted. The reference to these earlier applications has been properly provided in the Application Data Sheet provided on November 14, 2005. Because no change is being made to the claim of priority as previously intended, and the changes made relate only to formalities in the reference to the prior applications, the claim to priority acknowledged without the need for a submission of a grantable petition to accept an unintentionally delayed claim for priority.

### **EXAMINER'S AMENDMENT**

5. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR

Art Unit: 1648

1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Bruce H. Becker on February 1, 2006.

The application has been amended as follows:

The specification has been amended such that the reference to the priority applications submitted in the preliminary amendment of February 2, 2004 has been cancelled, and replaced with the following:

This application is a divisional application of and claims benefit of U.S. Application No. 09/763,260, now U.S. Patent 6,685,944, which was the national stage of International Application PCT/US99/18674, filed August 17, 1999, which claims benefit of U.S. Provisional Application No. 60/097,446, filed August 21, 1998, both of which are incorporated herein in their entirety.

The amendment is made such that the reference to the priority applications in the specification reflects the claim of priority presented in the Application Data Sheet.

***Claim Rejections - 35 USC § 101***

6. **(Prior Rejection- Withdrawn)** Claims 22-24, and 29-32 were rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. In view of the amendment of the claims to read on isolated polypeptides, the rejection is withdrawn.

***Claim Rejections - 35 USC § 102***

7. **(Prior Rejection- Withdrawn)** Claims 21, 22, and 24 were rejected under 35 U.S.C. 102(b) as being anticipated by Sarobe et al. (J Clin Invest 102: 1239-48- of record in the IDS of May 2004). In view of the correction of the reference to the earlier U.S. applications under 37 CFR 1.78, Sarobe is not properly applied as prior art against the present application. The rejection is therefore withdrawn.

***Claim Rejections - 35 USC § 103***

8. **(Prior Rejection- Withdrawn)** Claims 25, 26, 28-30, and 32 were rejected under 35 U.S.C. 103(a) as being unpatentable over Sarobe as applied to claims 21-24 above, and further in view of Chisari et al., (U.S. 5,709,995- of record in the May 2004 IDS). As indicated above, Sarobe is not applicable as prior art against the present application. The rejection is therefore withdrawn.

9. **(Prior Rejection- Withdrawn)** Claims 23, 27, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cabezon et al. (WO/97 04640), in view of Choo et al. (PNAS 88:2451-55), and Sarobe (supra). Because the teachings of Sarobe are required to provide motivation to alter the compounds described by the other references to arrive at the claimed invention, and because the teachings of this reference are not applicable against the present application as prior art for the reasons described above, the rejection is withdrawn.

***Double Patenting***

Art Unit: 1648

10. **(Prior Rejection- Withdrawn)** Claims 21-32 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3, 5-7, 9-11, and 13-15 of U.S. Patent No. 6,685,944. In view of the submission of the Terminal Disclaimer (filed November 14, 2005) with reference to the patent, the rejection is withdrawn.

### *Conclusion*

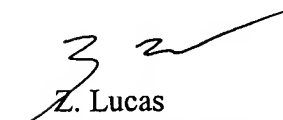
11. The following prior art reference is made of record and considered pertinent to applicant's disclosure. However, while relevant it is not used as a basis for rejection for the stated reasons.


Chang et al., J Clin Invest 100: 2376-85. This reference teaches the HCV T-cell epitope from which the peptide of SEQ ID NO: 1 was derived, and variants thereof. Pages 2379 (Table II) and 2380 (Figure 2). However, the reference does not teach the sequence of SEQ ID NO: 1, or provide any suggestion to make such a variant.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zachariah Lucas whose telephone number is 571-272-0905. The examiner can normally be reached on Monday-Friday, 8 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel can be reached on 571-272-0902. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Z. Lucas  
Patent Examiner

  
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2/6/06